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Commissioner

April 8, 1994

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FCC - MAIL ROOM

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554


RE: In the Matter of: Additional Comment Sought on Rules Governing Telephone
Companies' Use of Customer Proprietary Network Information

Dear Secretary:

Enclosed for filing are an original and nine copies of the Public Utility Commission of
Texas' comments in response to CC Docket Nos. 90-623 and 92-256.

Thank you for your assistance.

Sincerely,


Rowland L. Curry, P.E.
Director
Telephone Utility Analysis Division

Enclosures

cc: Rose M. Crellin
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FCC 94-63

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In the Matter of:

Additional Comment Sought on Rules
Governing Telephone Companies'
Use of Customer Proprietary
Network Information

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CC Docket No. 90-623

CC Docket No. 92-256

COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS

7800 Shoal Creek Blvd.
Austin, TX 78757
(512) 458-0100

April 11, 1994

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EXECUTIVE SUMMARY

Historically, the Public Utility Commission of Texas ("PUCT") has supported protecting the privacy of individual customers.

Changes in existing CPNI safeguards are necessary to strike the best balance between customers' privacy interests, competitive equity, and efficiency. The PUCT continues to believe that prior written authorization from a customer should be required before accessing, using, or releasing that customer's CPNI for unregulated purposes.

The PUCT believes that the PUCT's Substantive Rule §23.57(e), Telecommunications Privacy Rule, as adopted by the PUCT in 1992 provides the appropriate standard for an FCC rule governing telephone companies' use of customer-specific CPNI. By requiring LECs to obtain written authorization from a residential customer before using or releasing customer-specific CPNI, the Texas Privacy Rule ensures customers' privacy. While the Texas Privacy Rule addresses only residential customers, we believe that an FCC rule should be applied to all customers. Also, the rule provides for competitive equity by requiring that third parties have access to CPNI, under the same terms and conditions as LEC personnel and affiliates, if prior authorization is granted by the customer. By allowing a customer to give his or her verbal consent in certain circumstances, the rule also provides for "one stop shopping" efficiency.

The FCC's rules governing telephone companies' use of customer-specific CPNI should apply to all LECs. Also, the CPNI rules should apply to the provision of CPE.

The FCC should adopt a national policy that applies the Texas approach to all customers and all LECs.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 94-63

In the Matter of:

Additional Comment Sought on Rules
Governing Telephone Companies'
Use of Customer Proprietary
Network Information

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CC Docket No. 90-623
CC Docket No. 92-256

COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS

I. INTRODUCTION

1. On March 10, 1994 the Federal Communications Commission ("FCC" or "Commission") released its Public Notice ("Notice") in this proceeding.¹

2. The FCC has asked for comments by April 11, 1994 and reply comments by May 2, 1994 in this proceeding seeking additional comment on rules governing telephone companies' use of customer proprietary network information ("CPNI").

3. Historically, the Public Utility Commission of Texas ("PUCT") has supported protecting the privacy of individual customers. The PUCT continues to believe that prior written authorization from a customer should be required before

1 Public Notice, CC Docket No. 90-623 and CC Docket No. 92-256, released March 10, 1994.

using or releasing that customer's CPNI for purposes other than the provisioning of local exchange services. The PUCT supports pending federal legislation regarding restrictions on the disclosure of customer-specific CPNI. The PUCT believes that changes in the existing FCC CPNI safeguards are necessary to strike the best balance between the privacy interests of customers, issues of competitive equity, and the FCC's goals of efficiency in the marketing of telecommunications services. We also believe that the PUCT's Substantive Rule §23.57(e), Telecommunications Privacy Rule,² provides the appropriate standard for an FCC rule governing telephone companies' use of customer-specific CPNI.³

II. PUCT RESPONSE TO THE PUBLIC NOTICE

A. Current FCC CPNI Safeguards Not Adequate

4. As described in the FCC Notice in this proceeding:

"Under the current rules, any customer can request that its CPNI be withheld from the BOCs' enhanced services and CPE marketing personnel, although such personnel are generally allowed to make use of CPNI without prior customer authorization. Prior authorization is required only before BOC enhanced services marketing personnel are given access to the CPNI of customers with more than twenty lines. Third parties, such as independent enhanced services providers, must obtain advance authorization from the customer in order to obtain access to CPNI. The Commission's rules also require that the BOCs provide an annual written notice of CPNI rights to multiline business customers.⁴

2 PUCT Substantive Rule §23.57 (Attached as Exhibit I)

3 References to the PUCT's Substantive Rule §23.57(e), Telecommunications Privacy Rule, are to the rule as adopted by the PUCT in 1992. The CPNI provisions in the rule were recently found to be preempted by the FCC's regulations. (Southwestern Bell Telephone Company v. Public Utility Commission of Texas, 812 F. Supp. 706 (W.D. Tx. 1993).

4 Notice, Page 1.

The PUCT believes that in today's rapidly evolving telecommunications industry, the FCC's current CPNI safeguards fail to strike the best balance between the customers' privacy interests, competitive equity concerns, and the FCC's stated objective of efficiency in the marketing of services. Local telephone companies are entering into alliances, acquisitions, and mergers with non-telephone company partners, providing opportunity for a wider and wider dissemination of customer information - information that was originally gathered for the purpose of providing telephone service.⁵ Issues such as customer privacy, competitive access to information, and the efficiency of marketing telecommunications services are critical to the examination of CPNI, but it is important that these issues are not evaluated in isolation of one another. As discussed below, the issues overlap and must be evaluated and addressed concurrently if the FCC is to achieve an effective and comprehensive set of safeguards.

1. Customers' Privacy Interests

5. The PUCT believes that in this changing telecommunications environment, CPNI continues to encompass an increasing amount of subscriber information with increasingly refined detail.⁶ As the number and types of services available to customers grow, CPNI may expand to include not only call detail and billing information, but also more personal information about a subscriber, such as the subscriber's political views (e.g., what on-line news services does he subscribe to?) and cinematic preferences (e.g., what on-line movies did she order this week?).

5 Notice, Page 3.

6 Notice, Page 3.

6. Further, the PUCT believes that access to CPNI by affiliated companies creates privacy concerns for customers. In the changing environment of LEC alliances, acquisitions, and mergers with non-telephone company partners, access to CPNI among affiliated companies raises additional privacy concerns.⁷ This environment could allow a subscriber's customer-specific CPNI to be available to significantly more entities and individuals than was contemplated when the current FCC rules were adopted. The PUCT believes that there are significant privacy concerns when CPNI is made available to such entities and individuals because the customers of the telephone company do not expect that their information will be utilized by anyone other than the telephone company for the provisioning of local exchange service.⁸

7. The PUCT believes that prior written authorization from all customers should be required before any CPNI is accessed, used, or released for any purposes other than for the provisioning of local exchange services. The current FCC rules, which address the use and release of CPNI for customers with more than twenty lines through annual written notice of CPNI rights and balloting of those customers, are only applicable to multiline business customers. These rules virtually ignore any privacy rights or competitive issues regarding the CPNI of residential and small business customers. The PUCT believes that the CPNI concerns of the residential and small business customers are certainly as important as the CPNI concerns of the multiline business customers.

8. The use or release of CPNI for purposes other than the provision of the service from which it was obtained should be "presumptively restricted." The

⁷ Notice, Page 3.

⁸ Notice, Page 2.

information should not be released to third parties, including affiliates or subsidiaries of a LEC, or used for any other purposes unless the customer has granted prior written authorization. By "presumptively restricted," we mean that information cannot be released unless the consumer "affirmatively consents" to the release of that information. The Texas Privacy Rule ensures customer privacy by requiring LECs to obtain written authorization from a residential customer before using or releasing customer-specific CPNI.

2. Competitive Equity

9. Competitive concerns surrounding CPNI use arise from the fact that dominant telecommunications providers maintain large databases of information about their subscribers. In the case of dominant LECs, this is likely to include information about the vast majority of households in the state. This information includes both directory-type information, such as names and addresses, as well as information about calling patterns, payment information, and types of services purchased. LECs have been able to compile this information largely as a result of their positions as monopoly providers. As competition for telecommunications services grows, this wealth of information is a formidable source of competitive advantage to the incumbent, and could be an insurmountable barrier to entry for potential competitors.

10. Furthermore, although much of the debate regarding CPNI has focused on enhanced services, the PUCT believes that as an increasing number of previously monopoly services become open to competition, it is necessary to ensure that competitive providers have access to information on the same terms as the incumbent provider. Likewise, protections must be put in place as LECs enter

markets from which they were previously barred. Complicating this issue is the fact that broadening the availability of CPNI poses a threat to consumer privacy. Making information available to an increased number of parties reflects a change in the outflow of information about a customer, and precautions must be taken to ensure that customer privacy is not compromised while promoting competitive equity.

11. The FCC recently adopted rules allowing for expanded interconnection for special access and switched transport services. These rules have opened the door to competition for these services by allowing competitive access providers to connect their facilities to the LEC's at the LEC central office. The PUCT has also adopted a rule requiring expanded interconnection for intrastate special access services. The PUCT strongly supports the concept of an open network and the fostering of competition in the telecommunications industry. We observe, however, that interconnection to the "information bottleneck" is just as vital a component to telecommunications competition as is physical access. If competitors are denied access to information, pro-competitive policies may be thwarted, no matter what physical facilities are in place.

12. The current FCC rules requiring prior authorization before BOCs' enhanced services marketing personnel are given access to the CPNI of customers with more than twenty lines address only a part of the competitive equity issue. The rules do not promote competitive equity in the residential and small business markets.

13. The FCC's reasoning appears to be that the competition in the residential and small business markets is insignificant compared to the competition

in the markets for business customers with more than twenty lines. The FCC stated that the requirement for prior authorization for customers with more than twenty lines "preserves the benefits of our current rules for the further development of enhanced services for the mass market, while providing additional safeguards with respect to those customers whose CPNI might provide the greatest competitive advantage to the BOCs..."⁹ The FCC further stated that "a prior authorization rule for large business customers will achieve complete competitive equity for a valuable market segment while leaving intact the public interest benefits of joint marketing for smaller customers and not severely disrupting those for large business customers either."¹⁰

14. The PUCT believes that the assumption that competition in the residential and small business markets is not significant is incorrect and that these markets are indeed a valuable market segment to the BOCs. Information revealed by Southwestern Bell Telephone Company ("SWBT") in the course of the Federal District Court case regarding the PUCT's CPNI rule showed that SWBT estimated that it would incur revenue losses as a result of not being able to use customer-specific CPNI to market enhanced services to an estimated 95% of its customers.¹¹ In its Motion for Summary Judgement and Brief in Support of its Motion, SWBT stated as follows:

"The actual, 'real world' effect of the PUC Rule's barring the use of CPNI for company-initiated marketing except to those customers who return ballots authorizing such use, in fact, is the elimination of 95% of the potential direct-marketing customer base. Kelne Deposition (Exhibit 12-A) at 20. The FCC's *Order on Remand* made it clear that local exchange carriers were intended to be able to

9 In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards; and Tier 1 Local Exchange Company Safeguards. (Computer III Remand), 6 FCC Rcd 7571, 7612, (1991).

10 Computer III Remand at 7611.

11 Southwestern Bell Telephone Company v. Public Utility Commission of Texas, 812 F. Supp. 706, 712 (W.D. Tx. 1993).

use the CPNI of the entire residential customer market; the PUC Rule, if given effect, would leave Southwestern Bell with one-twentieth of its intended customer base. Furthermore, the Affidavit and deposition of Michael Kelne show that the ballot requirement of the PUC Rule would force Southwestern Bell to expend some \$3,000,000 in any meaningful effort to retain even a small, five percent fragment of the residential customer market to which the FCC intended local exchange carriers to have full access."¹²

15. Due to the changing telecommunications environment and the need for greater competitive equity in the residential and small business markets, the PUCT believes that prior written authorization from a customer should be required before CPNI could be accessed, used, or released for any purposes other than the provisioning of local exchange services. The Texas Privacy Rule provides for competitive equity by requiring that third parties have access to CPNI, under the same terms and conditions as LEC personnel and affiliates, if prior authorization is granted by the customer.

3. Efficiency

16. The FCC's most recent order concluded that a prior authorization rule would as a practical matter deny to all but the largest business customers the one-stop-shopping benefits of integrated marketing of basic and enhanced services by the BOCs.¹³ The FCC also observed that "integrated marketing to consumers and smaller businesses made possible by the current CPNI rule not only allows the BOCs to provide basic and enhanced services more efficiently, but also provides direct benefits to customers in the form of 'one stop shopping.'"¹⁴

12 Southwestern Bell Telephone Company's Motion for Summary Judgment and Brief in Support of its Motion at 11, Southwestern Bell Telephone Company v. Public Utility Commission of Texas, 812 F. Supp. 706 (W.D. Tx. 1993) (Civil Action No. A-92-CA-270).

13 Notice, Page 2.

14 Computer III Remand at 7610.

17. The PUCT believes that the Texas Privacy Rule allows LECs to market their enhanced services along with local exchange services, when a customer gives prior authorization, thereby meeting the FCC's efficiency goals. However, the PUCT notes that such marketing is appropriate only in cases where the primary focus is on marketing local exchange services by LEC personnel where the marketing of enhanced services or competitive services is secondary.

18. The FCC's current CPNI rulings regarding integrated marketing to consumers and smaller businesses are intended to allow for efficiency in marketing network and enhanced services, but the PUCT believes that they unnecessarily impede the ability of unaffiliated entities offering the same services to compete for the LEC's customer base - a customer base that the LEC enjoys exclusively by virtue of its status as a monopoly provider of local exchange service. Further, the PUCT finds that it is inappropriate to allow a LEC to release customer-specific CPNI to persons marketing enhanced or competitive services for the LEC or a LEC affiliate because releasing such CPNI to such persons violates the customer's reasonable expectation that the personal information gathered by the LEC will only be used by the LEC as necessary to provide traditional telephone service, unless otherwise authorized by the customer.

19. The PUCT believes that prior written authorization from a customer should be required before CPNI is accessed, used, or released for any purposes other than the provisioning of local exchange services. We also believe that the provisions of the Texas Privacy Rule which allow a customer to give verbal consent to the use of his or her customer-specific CPNI appropriately balance efficiency with customers' privacy interests and competitive equity.

4. The Texas Privacy Rule is Appropriate Standard

20. The PUCT believes that the Texas Privacy Rule (as discussed in Section III of our Comments) provides the appropriate standard for an FCC rule governing telephone companies' use of customer-specific CPNI. While the Texas Privacy Rule addresses only residential customers, we believe that an FCC rule should apply the Texas approach to all customers. The PUCT believes that the framework of our rule provides the best balance between customers' privacy interests, competitive equity, and efficiency.

B. Residential and Small Business Customers' Privacy Expectations

21. In the past, the FCC has concluded that customers' privacy expectations could be met without a notification obligation or a prior authorization requirement for internal BOC use of residential and small business customers' CPNI.¹⁵ The PUCT disagrees with this presumption and believes that residential and small business customers' expectations of privacy include having their customer-specific CPNI used only for the purposes of providing local exchange telephone services unless the customers give written authorization that the CPNI may be used, accessed, or released for other purposes. As stated in The National Regulatory Research Institute's Utility Customer Information: Privacy and Competitive Implications:

"Privacy, though a new concept in the field of public utility regulation, occupies an increasingly high profile in the public mind. Figure 3-1 [provided as Attachment 1] shows the persistence of public concern about privacy over the 1978-1990 period. Figure 3-1 shows the responses to three Louis Harris-Alan Westin surveys asked the questions, 'How concerned are you about threats to your personal privacy in America today?' (very concerned, somewhat concerned,

15 Notice, Page 2.

not very concerned, not concerned at all). The percentage of the population 'very concerned' about privacy rose from 31 percent in 1978 and stabilized around 47 percent in 1984 and 1990. If the 'very concerned' and 'somewhat concerned' categories are combined, the progression is from 64 percent in 1978, to 77 percent in 1983, to 79 percent in 1990. In all cases, a very high percentage of the population expresses concern about privacy."¹⁶

22. To protect customers' expectations of privacy in the changing environment of LEC alliances, acquisitions, and mergers with non-telephone company partners, the PUCT believes that LECs should be required to obtain affirmative consent from a customer for the access, use, or release of customer-specific CPNI for purposes other than the provisioning of local exchange services. By "affirmative consent," we mean that if no response is received from the customer regarding the release of CPNI, it shall be presumed that the customer does not give his or her consent to the release of the information.

C. Application of CPNI Rules to LECs

23. The PUCT believes that the FCC's rules governing telephone companies' use of customer-specific CPNI should apply to all LECs.¹⁷ Protection of privacy is common to all customers of all LECs and should be an affirmative part of national policy. The privacy interests of all customers should be protected, not just those of the customers of the BOCs and GTE. Therefore, the PUCT believes that the same CPNI safeguards that are necessary to strike the best balance between customers' privacy interests, competitive equity, and efficiency for the BOCs and GTE should be applicable to all other LECs.

16 The National Regulatory Research Institute, Utility Customer Information: Privacy and Competitive Implications (The Ohio State University, NRRI 92-11, September 1992), pp. 33-35.

17 Notice, Page 3.

D. Application of CPNI Rules to the Provision of CPE

24. The PUCT believes that the changes in the FCC's CPNI rules governing the provision of enhanced services should also apply to the provision of CPE.¹⁸ The same CPNI safeguards that are necessary to strike the best balance between customers' privacy interests, competitive equity, and efficiency in the provision of enhanced services are necessary in the provision of CPE.

III. HISTORICALLY PUCT HAS SUPPORTED PROTECTING PRIVACY

A. The Texas Privacy Rule

25. The PUCT believes that the principles set forth in its Telecommunications Privacy Rule §23.57(e), Customer Proprietary Network Information (Customer-specific), strike the best balance between customers' privacy interests, competitive equity, and efficiency. This rule was adopted by the PUCT in 1992.

26. The CPNI¹⁹ provisions in the Texas' Privacy Rule were recently found to be preempted by the FCC's regulations, but only on the narrow ground that it contained a prior authorization rule that was not otherwise required by FCC

¹⁸ Notice, Page 3.

¹⁹ PUCT Substantive Rule §23.57(a)(3) defines customer-specific CPNI as "any information compiled on a customer by a local exchange carrier in the normal course of providing telephone service that identifies any individual customer by matching such information with the customer's name, address, or calling or originating billing telephone number. This information includes, but is not limited to, line type(s), technical characteristics (e.g., rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns."

rules.²⁰ However, for the reasons described below, we believe the principles set forth in the PUCT's rule appropriately balance customers' privacy interests, competitive equity, and efficiency regarding the use of CPNI and, therefore, are the appropriate standards to guide the FCC's policy determination.

1. Customers' Privacy Interests

27. The Texas Privacy Rule sought to ensure customer privacy by requiring LECs to obtain written authorization (with certain limited exceptions) from a residential customer before allowing its personnel to use customer-specific CPNI to market supplemental services to that customer. Furthermore, a LEC could not release customer-specific CPNI to any third party, including but not limited to, providers of supplemental services and any third-party affiliate of the LEC without written authorization from the customer.

28. Written authorization for release of CPNI would be obtained by requiring that a ballot be sent to all residential customers. This ballot would have to describe specifically the nature of the information to be released if authorization is granted, and allow the customer the option of specifying what information he or she wanted released. There would be no charge to the customer for maintaining the restriction or for allowing the release of his or her CPNI. Furthermore, no information would be used or released by the LEC if the ballot was not returned by the customer.

20 Southwestern Bell Telephone Company v. Public Utility Commission of Texas, 812 F. Supp. 706, 710 (W.D. Tx. 1993).

2. Competitive Equity

29. The Texas Privacy Rule also provided for competitive equity by requiring that all information authorized for release to a third party would be offered by the LEC to such third parties. The LEC would have to offer this information under the same terms, conditions, and at the same prices as such information is made available for use to all other businesses affiliated with the LEC and to LEC personnel marketing supplemental services. We believe that this results in competitive equity because third parties would be treated in essentially the same manner as the LEC affiliates and personnel.

30. The rule also provided for competitive equity by requiring that if a new residential customer contacted a LEC to initiate local exchange service and the customer asked about supplemental services, the LEC personnel, prior to marketing such services to that customer, would have to inform the customer that similar services may be available from a vendor other than the LEC.

3. Efficiency

31. The rule provided for efficiency by allowing LEC personnel to ask for verbal authorization to use a customer's CPNI in cases where a residential customer contacted the LEC to ask about supplemental services and the customer had not authorized the LEC personnel to access or use his or her customer-specific CPNI. This procedure allows for efficiency because it provides residential and small business customers with the "one stop shopping" benefits of integrated marketing of local exchange and enhanced services.²¹

21 Notice, Page 2.

4. Summary of the Texas Privacy Rule

32. By requiring LECs to obtain written authorization from a residential customer before using or releasing customer-specific CPNI, the Texas Privacy Rule sought to protect the privacy of local exchange company customers. Additionally, the rule provided for competitive equity by requiring that third parties have access to CPNI, under the same terms and conditions as LEC personnel and affiliates, once prior authorization is granted by the customer. By allowing a customer to give his or her verbal consent in certain circumstances, the rule also provided for "one stop shopping" efficiency. In addition, the rule provided for customer education by requiring that customers be advised of exactly what information will be released if authorization is given. The PUCT believes that customer education is a crucial component of a successful privacy policy. We believe the approach set forth in our rule appropriately and fairly balances customers' privacy interests, competitive equity, and efficiency.

B. PUCT Comments - Computer III Remand

33. In its comments In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards ("Computer III Remand") CC Docket No. 90-632 the PUCT of Texas as a part of the Southwest Regional Regulatory Group ("SWRRG") stated, "The SWRRG remains convinced that prior written authorization from all customers should be required before using or releasing CPNI for unregulated purposes."²²

22 In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, Comments of the Arkansas Public Service Commission and the Kansas Corporation Commission and the Missouri Public Service Commission and the Oklahoma Corporation Commission and the Public Utility Commission of Texas on Behalf of the Southwest Regional Regulatory

C. PUCT Comments - NTIA

34. In our comments before the U.S. Department of Commerce, National Telecommunications and Information Administration ("NTIA"), In the Matter of: Privacy Issues Relating to Private Sector Use of Telecommunications-Related Personal Information Docket No. 940104-4004 we stated that the principles set forth in our Telecommunications Privacy Rule "properly balance the need for competitive equity with customer privacy protections."²³

IV. PUCT SUPPORTS FEDERAL LEGISLATION REGARDING CPNI

35. The PUCT strongly supports the CPNI privacy protections set forth in H.R. 3432, Telephone Consumer Protection Act of 1993, as introduced by United States Representative Edward J. Markey. Title I of this legislation will prohibit a telephone company from disclosing or selling any consumer's CPNI data to anyone, including telephone company affiliates and subsidiaries, without the affirmative consent of that consumer.

V. CONCLUSION

36. The PUCT believes that changes in existing CPNI safeguards are necessary to strike the best balance between customers' privacy interests, competitive equity, and efficiency. The PUCT continues to believe that prior

Group, February 20, 1991, Paragraph 20. (Copies of the relevant portions are attached as Exhibit II)

23 Before the U.S. Department of Commerce, National Telecommunications and Information Administration, In the Matter of: Inquiry on Privacy Issues Relating to Private Sector Use of Telecommunications-Related Personal Information, Docket No. 940104-4004, Comments of the Public Utility Commission of Texas, March 10, 1994, Paragraph 20. (Attached as Exhibit III)

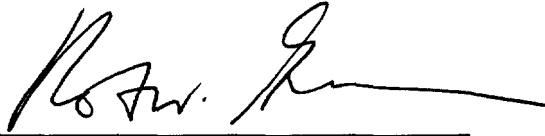
written authorization from a customer should be required before accessing, using, or releasing that customer's CPNI for purposes other than the provisioning of local exchange services.

37. The PUCT believes that the PUCT's Substantive Rule §23.57(e), Telecommunications Privacy Rule, as adopted by the PUCT provides the appropriate standard for an FCC rule governing telephone companies' use of customer-specific CPNI. By requiring LECs to obtain written authorization from a residential customer before using or releasing customer-specific CPNI, the Texas Privacy Rule ensures customers' privacy. The Texas Privacy Rule addresses only residential customers, however, we believe that an FCC rule should be applied to all customers. The Texas Privacy Rule also provides for competitive equity by requiring that third parties have access to CPNI, under the same terms and conditions as LEC personnel and affiliates, if prior authorization is granted by the customer. By allowing a customer to give his or her verbal consent in certain circumstances, the rule also provides for "one stop shopping" efficiency.

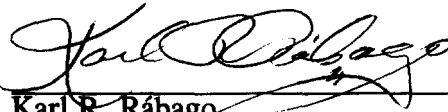
38. The PUCT believes that the FCC's rules governing telephone companies' use of customer-specific CPNI should apply to all LECs. Also, the CPNI rules should apply to the provision of CPE.

39. The FCC should adopt a national policy that applies the Texas approach to all customers and all LECs.

Respectfully submitted,



Robert W. Gee
Chairman



Karl R. Rábago
Commissioner

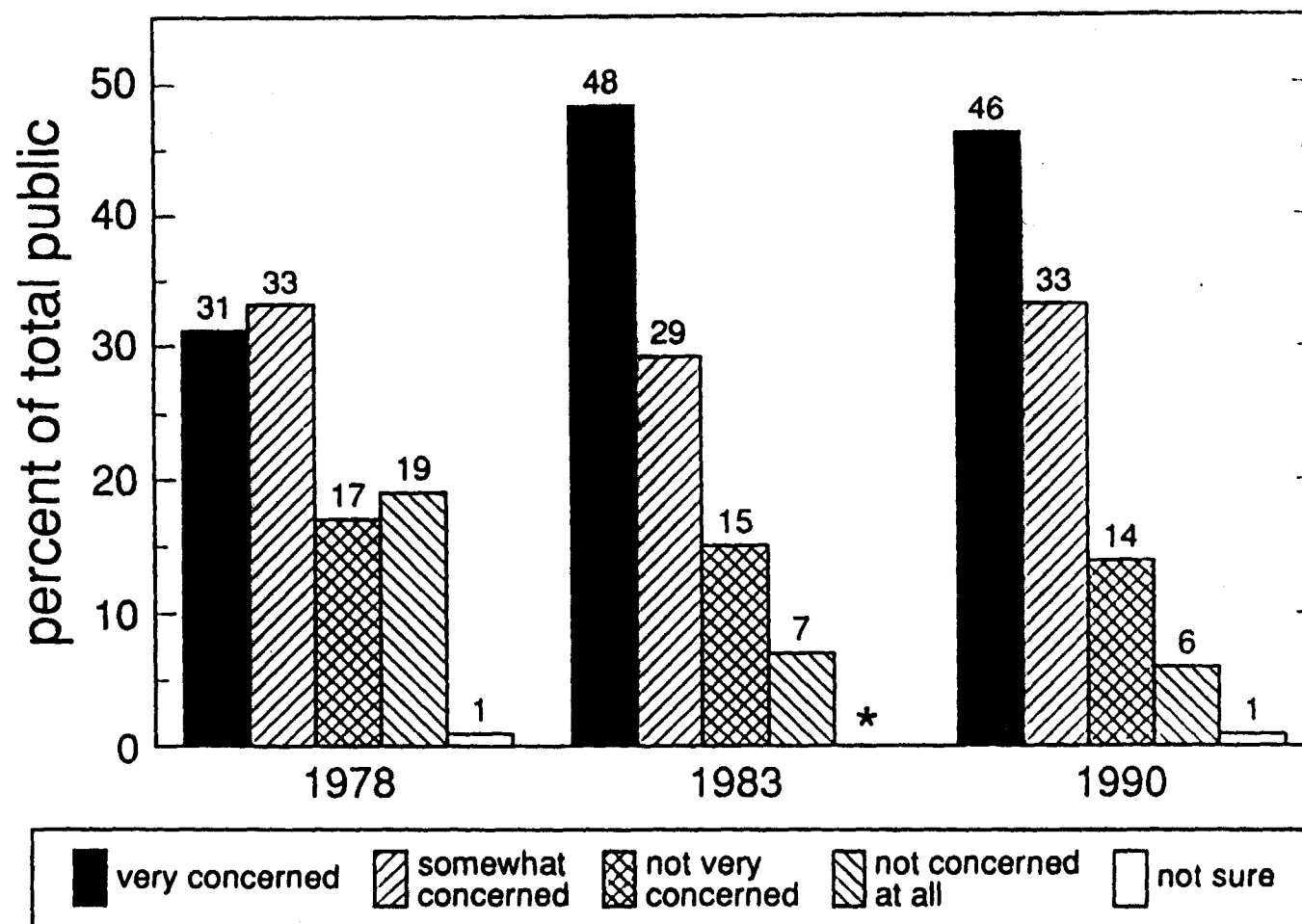


Sarah Goodfriend
Commissioner

April 7, 1994

PUBLIC UTILITY COMMISSION OF TEXAS

7800 Shoal Creek Boulevard
Austin, Texas 78757
(512) 458-0100



*In 1983 the "not sure" responses were less than 0.5%.

SOURCE: Louis Harris & Associates and Alan F. Westin, The Equifax Report on Consumers in the Information Age (Atlanta, GA: Equifax, 1990).

Fig. 3-1. Public concern about privacy.

(I) Through February 28, 1995, the appropriate total access MOU shall be the intrastate local switching access MOU as described in subsection (c)(3)(A) of this section.

(II) Effective March 1, 1995, the appropriate total access MOU shall be the sum of intrastate local switching access MOU as described in subsection (c)(3)(A) of this section, plus LEC intrastate equivalent access minutes of use as described in subsection (c)(3)(B) of this section.

(ii) The assessment to each telecommunications utility, excluding or including LECs as described in subparagraph (B) of this paragraph, shall be the amount of that utility's total access MOU multiplied by the assessment rate for the current period calculated pursuant to clause (i) of this subparagraph. The administrator may develop a methodology to allow each LEC to net its HCA requirement against its assessment and forward the difference to the administrator. The assessment shall be treated as an access charge for purposes of §23.25 of this title (relating to Long Distance Rates). However, monthly changes to the assessment as a result of volume fluctuations or factors other than a change in the overall HCA requirements, shall not require a separate flow through filing more than once annually.

(iii) LECs shall submit monthly reports to the administrator showing the appropriate total access MOU. Telecommunications utilities other than LECs shall submit monthly reports to the administrator showing additional data that is required by the administrator to calculate the assessments.

(D) Reserves. Any amount established as a reserve pursuant to subparagraph (A)(iii) of this paragraph that exists as of February 28, 1995, shall be distributed to all telecommunications utilities that paid assessments in 1994. The distribution amount shall be based on each utility's proportionate share of total access MOU for the 12-month period ending August 31, 1994.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 15, 1992.

TRD-9205353

Mary Ross McDonald
Secretary
Public Utility Commission
of Texas

Effective date: May 7, 1992

Proposal publication date: February 25, 1992

For further information, please call: (512) 458-0100

• 16 TAC §23.57

The Public Utility Commission of Texas adopts new §23.57, concerning telecommunications privacy issues, with changes to the proposed text as published in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5763).

The commission adopts the new section after finding that privacy issues are becoming increasingly relevant in the emerging advanced telecommunications infrastructure and that customers may be unaware of the extent of the accumulation and dissemination of customer information by local exchange carriers. Changes to the proposed rule affect every subsection and are generally in the nature of clarifying the rule's intent. These changes are explained in the summary of comments.

The adopted section will function to educate customers of local exchange carriers about the transmission of Automatic Number Identification (ANI) on 800 and 900 telephone calls, ensure that customer proprietary network information compiled by and available to local exchange carriers will be released under controlled circumstances, and require local exchange carriers to identify and address privacy concerns before introducing any new service.

Comments were received for 30 days and reply comments for an additional 30 days. Parties commenting on the proposed rule were: the Texas Association of Telephone Answering Services, Inc. (TATAS), the Texas Telephone Association (TTA), Consumers Union, the Texas Gray Panthers, Central Telephone Company of Texas (CENTEL), the A.C.L.U. of Texas, the Office of Public Utility Counsel (OPUC), AT&T, GTE-Southwest Incorporated and Contel of Texas, Inc. (GTE-SW), Southwestern Bell Telephone Company (SWBT), United Telephone Company of Texas, Inc., MCI Telecommunications Corporation, Crime Stoppers, the Texas Association Against Sexual Assault (TAASA), and the Texas Council on Family Violence. CENTEL's comments were in the form of a cover letter concurring with the comments submitted by TTA. Reply Comments were received from GTE-SW, US Sprint Communications Company Limited Partnership (Sprint), SWBT, and the Texas Department of Human Services (DHS).

SWBT commented that the proposed telecommunications privacy rule is "untimely, unnecessary and detrimental to consumers," suggesting that the balloting requirements imposed by the CPNI provision of the rule would confuse customers and provide no incentive for LECs to offer new services. United commented that "it has not been demonstrated that LEC customers are concerned about the treatment of CPNI by LECs."

Inasmuch as privacy issues are becoming increasingly relevant in the emerging advanced telecommunications infrastructure and that customers may be unaware of the accumulation and dissemination of customer information by the LECs, the commission finds that a rule addressing such concerns is both timely and necessary. Those provisions of the rule that address balloting of customers provide a

local exchange carrier with 180 days to compose a clear, concise ballot informing the customer of his options with respect to the release of CPNI. SWBT's comment regarding the LECs' lack of incentive to offer new services will be addressed below in the discussion on the CPNI provisions of the rule.

TTA and SWBT dispute the deputy general counsel's statement in the preamble to the proposed rule that "there is no anticipated economic cost to persons who are required to comply with the section as proposed." TTA specifically claims that "anytime a ballot or bill insert is required, the cost of postage alone negates the statement."

The commission finds that, to the extent an economic cost has been identified for persons who are required to comply with the section as proposed, the public benefit resulting from such compliance outweighs the cost.

All of the LECs that commented stated that the definitions of "supplemental services" and "optional calling features or plans (OCFPs)" were confusing and that the distinction between them was unclear. Further, the LECs commented that the provision of the proposed rule addressing OCFPs subsection (b)(5) would tie the LEC's hands in marketing its own regulated monopoly services. TATAS commented that the definition of "supplemental services" should state that any service offered on an unaffiliated basis by a local exchange carrier is a "supplemental service," and further that voice messaging services should be included in the definition as a "supplemental service." GTE-SW commented that "basic service," which is used in the definition of "supplemental services" is not defined and, therefore, the definition is itself ambiguous.

The commission agrees that the provisions on OCFPs are unnecessarily burdensome on the LECs' ability to market regulated monopoly services, therefore, all definitions and provisions of the rule addressing "optional calling features or plans" have been deleted. The intent of the distinction in the definitions between OCFPs and "supplemental services" was to clearly identify what services would constitute "supplemental services" for the purpose of releasing customer-specific CPNI for the use of local exchange carrier personnel marketing such "supplemental services." The definition of "supplemental services" is still necessary and relevant to the rule and remains in the rule; however, it has been revised in consideration of comments and to clarify the rule's intent.

The published version of the proposed rule referenced "current privacy expectations" in a general statement addressing customer privacy at subsection (a). Several commenters noted that "current privacy expectations" is an undefined term in need of definition. TTA commented that "current privacy expectations" is somewhat ambiguous and that the rule should be modified to clarify the standard and to allow for the standard to change. Similarly, OPUC and Consumers Union commented that the rule lacked standards and a definition for "current privacy expectations." Consumers Union stated that in lacking a definition for "current privacy expectations," the rule contained no standards for the commission to use to determine whether the LEC

is in compliance with the intent of the rule. OPUC suggested that the LECs may be able to alter the standard each time an application is approved. GTE-SW commented that the proposed rule "presumes that any loss of privacy is harmful" and that it also "assumes that the affected individual desires that the loss of privacy be restored." GTE-SW ventures on to state that "in any free society, a reasonable balance must be drawn between the expectations of individuals and the overall benefits to society that result from some form of change. In some cases, the benefits to society may be sufficient to warrant the associated loss of individual privacy."

The commission agrees that the reference to "current privacy expectations" is ambiguous and has thus deleted that reference from the rule. The commission clarifies the rule's intent with the addition of a definition for "privacy issue" in subsection (a)(4). Further, subsections (b) and (c) clearly set forth factors for the commission to consider in determining privacy issues in any LEC application to offer a new service or feature.

Subsection (c) of the proposed rule was clearly misinterpreted by commenters. Both industry and consumers groups alike stated that they interpreted the subsection on new service applications to mean that a LEC would bring in an application, state what the LEC considered to be the privacy concerns with the new service - if any, - and that the application would then be approved. In particular, commenters stated that the proposed rule de facto approved caller identification services for the state. TTA stated that the rule "as rewritten would allow LECs the flexibility needed to offer Caller ID." Consumers Union stated that "under this rule, all the commissioners can do is ensure that all subjective statements required (by the LECs) in the application have been filed. By adopting this rule the commission will completely abdicate its responsibility to the public on issues of privacy." The Texas Council on Family Violence stated that the rule "would allow the telephone company to determine its own approaches to creating a market for Caller ID. We believe the Public Utilities Commission must continue its involvement in this process."

Proposed subsection (c) was intended merely as an information gathering tool to be utilized by the commission in reviewing all applications for new services or new features to existing services. The criteria set out in the subsection were not intended to be inclusive of the privacy issues the commission would examine, nor would the submission of an application listing such criteria guarantee commission approval of such an application. The proposed rule is not intended to be a caller ID rule and was not drafted to preclude or endorse the introduction of such services in Texas, but rather to provide a mechanism for commission review of privacy issues in all applications.

However, given the extent of comments on this subsection, the rule has been revised to clarify the review process for new services applications in subsections (b) and (c). These subsections provide for the LEC to list what it believes to be the privacy concerns, if any, in

its application. Due to rapidly evolving telecommunications technologies, it is necessary for the commission to review each new service application for privacy concerns on a case by case basis. Rather than set explicit standards for each new service application in order to meet concerns about customer privacy, the rule, as clarified in revision, allows the commission the flexibility to examine the issues as technology develops and customer expectations change. The commission reserves the authority to deny or modify any new service application if it should determine that a privacy issue has not been adequately resolved by the LEC.

Consumers Union also commented that the exception in the rule for "good cause" was a back door for the LECs to avoid addressing privacy concerns. They stated that non-subscribers to a service should never be "worse off" so that someone else can enjoy a service. Again, the commission has a responsibility to ensure that Texas enjoys the benefits of a developing telecommunications infrastructure. Each application must be examined individually to determine the applicable privacy concerns. The rule addresses good cause in order to allow an LEC to provide explanation for not restoring a lost degree of privacy - the commission determines whether good cause has been shown, however, not the LEC.

Consumers Union requested that the commission withdraw the rule and hold the promised workshops to examine privacy issues. They suggested that the commission invite balancing interests such as battered women's shelters, hotlines, law enforcement, etc. OPUC called for full evidentiary hearings before adopting any rule on privacy in order to fully examine all the issues.

The commission held a workshop in May of 1991 to examine privacy issues and, in addition to the industry, invited a host of balancing interests, including battered women's shelters, hotlines, law enforcement, and the Consumers Union. Virtually no parties other than the industry attended the workshop, therefore, the commission did not hold subsequent workshops on the issue. In the event an LEC application to offer new services is docketed, the commission will hold full evidentiary hearings as required and, thereby, provide for a focused examination of the issues as they arise on a case-by-case basis.

Commenters addressing the Automatic Number Identification ANI provision in the proposed rule were TTA, the ACLU of Texas, OPUC, and AT&T. Sprint and SWBT commented on reply. TTA stated that the rule should target all services that pass ANI, not just 800 services, and that the IXCs (and any other telecommunications carrier that passes ANI) should be required to provide the same kind of billing insert. Additionally they suggested that the billing insert language be changed to read "your telephone number may be passed by your long distance company to the company you have called." SWBT concurs in reply with TTA on the IXC requirement for billing inserts. The ACLU of Texas stated that the ANI should be blocked because it serves as a key to unlock databases of information. However, Sprint argued in reply that

businesses use ANI to improve efficiency of business operations, not because they have a privacy interest in seeing the number before they answer the phone, and further, that the ANI does not carry with it any data at all. Sprint stated that "under no circumstances, (does the ANI) unlock data that is not otherwise already in the possession of the receiving party." OPUC commented that the ANI should be restricted to billing and collections or for the commission to consider on-line warnings to subscribers alerting them to the transfer of their telephone number to 800 customers. However, SWBT argues in reply that on-line warnings would frighten the calling party. AT&T suggested that the reference to ANI in subsection (e)(3) (B) be modified to state that "a local exchange carrier must provide ANI to interexchange carriers, where it has the technical capability." Sprint concurs with AT&T on reply.

The commission agrees with TTA's suggestion regarding expanding the scope of the notice to include 900 numbers and the rule has been revised to reflect the change. However, the commission rejects TTA's suggested language changes with respect to long distance carriers as an LEC could technically transmit the ANI (or other calling number identification) on intraLATA 800 calls with the implementation of SS7 technology. Further, the notice is clear in its purpose of notifying the caller that the telephone number may be available to the 800 customer regardless of how it is carried. The commission cannot require the IXCs to provide billing inserts due to the commission's limited jurisdiction over IXCs. Similarly, while the commission understands the concerns of the ACLU of Texas, the commission has limited jurisdiction in restricting the IXCs' use of the ANI, and moreover, cannot order the LECs to block transmission of the ANI to the IXCs because the law (Modified Final Judgement) requires such transmissions for billing purposes. The commission finds that on-line warnings would be costly and unnecessary and that consumers may find such warnings confusing and alarming. The purpose of the ANI provision in the rule is to inform the consumer of the possible transmission of his telephone number to 800 or 900 customers and, thereby, afford such consumer the opportunity to make an informed decision before placing the call. The commission finds that written notification accomplishes this goal most efficiently.

The most extensive comments on the rule were regarding the CPNI provisions. GTE-SW repeatedly stated that the proposed rule is not a privacy rule, but rather deals inappropriately with anti-competitive concerns. GTE-SW stated that the rule is inappropriate because GTE-SW does not use CPNI to market supplemental services, but rather uses other outside data readily available from a variety of sources. TTA commented that "LECs purchase consumer demographic and target market information from the same sources that competitors use." SWBT included with their comments a variety of articles emphasizing the availability of personal information from sources other than local exchange carriers.

The commission finds that the rule appropriately addresses the dispensation of